IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2136 OF 1998

Shri Pradeep Kushawar ...Plaintiff

Versus

Shri Sudhakar Shetty ...Defendant

Shri Rajadhyaksha holding for Shri R.R.Arolkar for the Plaintiff.

None for the Defendant.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 03, 2007.

ORAL JUDGMENT:

1. This suit is listed under the caption of "Undefended Suits for Exparte Decree".

2. The Plaintiff is an architect. The Plaintiff has filed this suit for recovery of the fees for the professional services rendered by him to the Defendant. The Plaintiff has claimed interest at the rate of 18 per cent per annum till the date of filing of the suit and also from the date of institution of the suit till the realisation or payment.

3. The learned counsel for the Plaintiff has tendered on record an affidavit of evidence of the Plaintiff. The said affidavit is taken on record and marked "X" for identification. The Plaintiff has

tendered on record eight documents alongwith a list. The said documents alongwith the list are marked "Y" (collectively) for identification and the same are taken on record.

4. According to the case of the Plaintiff, the Defendant appointed him as an architect for development of a plot of land bearing No.65 at village Cheripoli, Taluka Shahpur, District Thane. On the said plot, the Defendant was desirous of constructing a hotel. By agreement dated 06th February, 1995 the Defendant appointed the Plaintiff as his architect. The Defendant agreed to pay professional fees of the Plaintiff at 4.5 per cent on the gross value of all the items of building and civil work including plumbing, water supply and drainage work with fixtures and fittings, electric installation work with fittings etc. According to the case of the Plaintiff, the Defendant failed and neglected to pay professional charges payable to the Plaintiff as per terms and conditions agreed and by between the parties. According to the case of the Plaintiff, final bill dated 07th October, 1995 was submitted by him to the Defendant in the sum of Rs.1,75,500/-. Out of the said amount, a sum of Rs.50,000/- was paid as an advance by the Defendant. Out of the balance amount of Rs.1,25,000/-, the

Defendant paid a total amount of Rs.20,500/- in cash in February and March 1996 leaving the balance of Rs.01,05,000/-. Various letters were sent by the Plaintiffs calling upon the Defendants to pay the amount. The claim in the suit is in the sum of Rs.01,05,000/- with interest of Rs.4725/- calculated at the rate of 18 per cent per annum on 15th January, 1998 till the date of the suit. The prayer is also made for grant of further interest.

5. In the affidavit (marked X), the Plaintiff has stated that the original agreement dated 06th February, 1995 has been lost and misplaced and inspite of search made by him, the original could not be traced out. It is stated in the affidavit that when the suit was filed, the agreement was available with the Plaintiff. Therefore, a permission is sought for leading secondary evidence of the agreement by producing a xerox copy thereof. Apart from the xerox copy of the agreement, the Plaintiff has placed on record drawings prepared by him for construction of proposed hotel of the Defendants. He has also produced the office copy of the letter dated 03rd January, 1995 sent by him to the Defendant. He has also produced on record the office copy of letter dated 07th August, 1995 alongwith bill dated 07th October, 1995 forwarded by him to the

Defendant. A copy of the Advocate's notice dated 01st January, 1998 is also produced. The letter dated 16th March, 1996 signed by the Defendant addressed to the Assistant Executive Engineer of the National Highways Sub-Division No.33, Taluka Shahpur, District Thane has been also produced. The postal acknowledgment of the demand notice dated 01st January, 1998 has been produced.

6. The Plaintiff has made out a case for granting permission to lead secondary evidence of agreement dated 06th February, 1995 by producing a xerox copy thereof. Accordingly, a xerox copy of the agreement has been produced. The said agreement alongwith the aforesaid documents have been duly proved by the Plaintiff by the said affidavit. The claim in the suit is also proved by the Plaintiff by the said affidavit and by the documents which are referred to above.

7. The Plaintiff has prayed for interest at the rate of 18 per cent per annum from the date of institution of the suit till realisation. There is no stipulation in the contract between the parties as regards payment of interest. Considering the nature of the transaction, further interest will have to be fixed at the rate of 9 per cent per annum.

8. Hence, I pass the following order:

(i) The Defendant is ordered and decreed to pay to the Plaintiff a sum of Rs.01,09,725/- together with interest on the amount of Rs.01,05,000/- at the rate of 9 per cent per annum from the date of institution of the suit till realisation or payment.

(ii) The Defendant shall pay costs of the suit to the Plaintiff.

(iii) Certified copy is expedited.

JUDGE